

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

**Resolve, Regarding Legislative Review of Portions of
Chapter 26: Standards for Indoor Pesticide Applications and
Notification for All Occupied Buildings Except K-12 Schools,
a Major Substantive Rule of the Department of Agriculture,
Food and Rural Resources, Board of Pesticides Control**

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

Whereas, the above-named major substantive rule has been submitted to the Legislature for review; and

Whereas, immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

Sec. 1 Adoption. Resolved: That final adoption of portions of Chapter 26: Standards for Indoor Pesticide Applications and Notification for All Occupied Buildings Except K-12 Schools, a provisionally adopted major substantive rule of the Department of Agriculture, Food and Rural Resources, Board of Pesticides Control that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, is authorized.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

BASIS STATEMENT FOR THE FINAL ADOPTION OF AN AMENDMENT TO CHAPTER 26—STANDARDS FOR INDOOR PESTICIDE APPLICATIONS AND NOTIFICATION FOR ALL OCCUPIED BUILDINGS EXCEPT K–12 SCHOOLS

Chapter 26 of the Board's rules describes standards for indoor pesticide applications and notification for all occupied buildings except K–12 schools. The proposed amendments were developed by the Board to address concerns voiced by pest management professionals that the rule's advance notice requirements were creating unreasonable hardships for both applicators and customers. The proposed amendments exempt crack and crevice treatments, in addition to baits, gels, pastes, dust and granular materials, from the notification requirements in Sections 3(A), 3(B) and 3(C), while maintaining the "right-to-know" provisions in Section 3(D). The proposed amendments also require that the written notice must be posted for 48 hours in residential and workplace situations and that the responsibility for notification falls on the person carrying out and confirming the notification in residential, workplace and childcare facilities.

The Board received two written and no oral comments. One comment was supportive of notification for all treatments and encouraged communication between parties involved. The other comment stated that the requirement for 48-hour posting should be changed from "must" to "should."

Ultimately, the Board agreed with industry concerns and decided that, while notification is an important practice, it is unnecessarily burdensome in the current rule for applications with low potential for exposure. To clarify an omission in the current rule concerning the posting requirements, the Board also decided to adopt the proposed amendment requiring that the notice must remain posted for at least 48 hours following the application, making this rule consistent with the lawn care posting requirements. Finally, to address ambiguity in the current rule, the Board also decided to adopt the proposed amendment clarifying that the person who carries out the posting is responsible to ensure the requirements are fulfilled.

The rule was provisionally adopted by the Board at its meeting on January 25, 2008, pending legislative review. The Board now finally adopts the rule as authorized by the Legislature pursuant to LR 3503, signed by the Governor on March 17, 2008.

Impact on Small Business

In accordance with 5 MRSA §8052, sub-§5-A, a statement of the impact on small business has been prepared. Information is available upon request from the Maine Board of Pesticides Control office, State House Station #28, Augusta, Maine 04333-0028, telephone 207-287-2731.